

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:)	Case No. 17-43886-399
)	Chapter 13
RICHARD K. NIEDLING and)	
PAULA JEAN NIEDLING,)	ORDER and NOTICE of
)	REINSTATEMENT and
Debtors.)	SCHEDULING ORDER

On June 5, 2017, the Debtors filed a petition for relief under Chapter 13 of the Bankruptcy Code. The certificates of credit counseling filed by the Debtors with their bankruptcy petition showed that the Debtors obtained credit counseling more than 180 days prior to the Chapter 13 petition date in contravention of Bankruptcy Code § 109(h). The Debtors' case was dismissed the same day it was filed. Two days later on June 7, 2017, the Debtor filed a Motion to Reinstate Case, which was denied with a notation that the Debtor may file a new case. Fourteen days after the denial of the Debtors' motion to reinstate, the Debtors filed a Motion to Reconsider Order Denying [*sic*] to Reinstate Case and Request to Rescind Foreclosure Sale (Motion to Reconsider and Rescind).

In the Motion to Reconsider and Rescind, the Debtors cite to Federal Rule of Civil Procedure 60, made applicable by Federal Rule of Bankruptcy Procedure 9024. The Debtors state that on the June 5, 2017 petition date, the Debtors' counsel inadvertently filed the wrong version of the Debtors' credit counseling certificates. Instead of filing with the court the certificates showing that the Debtors obtained credit counseling on June 4, 2017 (the day before the petition date), counsel filed certificates showing that the Debtors obtained credit counseling in September 2016. Counsel states that he did not realize his error until June 7, 2017 when he saw the order dismissing the Debtors' case. On June 6, 2017, the foreclosure sale of the Debtors' home took place. The Motion to Reconsider and Rescind asks that I (1) "reconsider" the denial of the motion to reinstate the Debtors' Chapter 13 case; and (2) issue an order rescinding the foreclosure sale that took place on June 6, 2017. Upon careful consideration it is hereby

ORDERED that the Motion to Reconsider and Rescind (doc 26) is **GRANTED IN PART** in that the June 7, 2017 Order (doc 15) denying the Debtors motion to reinstate their case is **VACATED** and **SET ASIDE** in its entirety. It is further

ORDERED that the Debtors' Motion To Reinstate and Set Aside Dismissal (doc 14) of this Chapter 13 case be and it hereby is **GRANTED**, in that this Court's Order of Dismissal (doc 10), dated June 5, 2017, be and it hereby is **VACATED** and **SET ASIDE** in its entirety. This case is hereby reinstated. If the stay of 11 U.S.C. § 362 has not terminated, such stay is reinstated. All motions pending when the case was dismissed are hereby reinstated, without calendar dates. Debtor(s) shall obtain a hearing date and time and reset all matters

pending and provide notice to all appropriate parties. Failure to comply with the provisions of this Order within 14 days of the date of this Order may result in such motion(s) being granted upon application of movant without further notice. It is further

ORDERED that all application filed under 11 U.S.C. § 503(b) and approved after the date of dismissal of this case and before the date of this Order, are hereby set aside, provided the Trustee has not previously paid such claims. It is further

ORDERED that the 11 U.S.C. §341 Meeting of Creditors is RE-SET to July 26, 2017 at 9:00 a.m. in the U.S. Trustee Meeting Room, at 111 S. 10th Street, First Floor, Room 1.310, St. Louis, MO 63102. It is further

ORDERED that Debtors' Chapter 13 Confirmation hearing on Debtors' Chapter 13 Plan (doc 5) be and it is hereby **RE-SET to August 30, 2017 at 10:00 a.m.,** in the United States Bankruptcy Court, Eastern District of Missouri, United States Courthouse, Thomas F. Eagleton Federal Building, **5th Floor, North** Courtroom, 111 S. 10th Street, St. Louis, Missouri, 63102. It is further

ORDERED that the Motion to Reconsider and Rescind (doc 26) is **DENIED IN PART** in that the Debtors' request to set aside the foreclosure sale of their home is denied for failure to provide proper service to the lender. Leave is hereby granted to the Debtors to file a separate motion to set aside the foreclosure sale if the Debtors indicate who is the holder of the mortgage and the Debtors provide proper service of that motion under Federal Rule of Bankruptcy Procedure 7004.

DATED: June 26, 2017

St. Louis, Missouri

amw



Barry S. Schermer

United States Bankruptcy Judge

Copy to:

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CHAPTER 13 TRUSTEE

U.S. Trustee

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ALL CREDITORS AND PARTIES IN INTEREST AS SET FORTH ON THE MATRIX